TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1924

No. [redacted]336

B. F. LEE ET AL., PLAINTIFFS IN ERROR,

vs.

OSCEOLA & LITTLE RIVER ROAD IMPROVEMENT DISTRICT NO. 1 OF MISSISSIPPI COUNTY, ARKANSAS

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

FILED MARCH 22, 1924

(30,215)

(30,215)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 905

B. F. LEE ET AL., PLAINTIFFS IN ERROR,

vs.

OSCEOLA & LITTLE RIVER ROAD IMPROVEMENT DISTRICT NO. 1 OF MISSISSIPPI COUNTY, ARKANSAS

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 5, 1924

[fol. 1] [Caption omitted]

[fol. 2] Osceola & Little River Road Improvement District No. 1 of Mississippi County, Arkansas, Plaintiff,

vs.

Certain Lands and E. L. Prince et al., Defendants

Complaint

To the Hon. Archer Wheatley, Chancellor, holding Chancery Court in the Osceola District of Mississippi County, Arkansas:

The plaintiff states:

I

That on the — day of ——, 19—, —— —— et al. presented to the county court of Mississippi County, Arkansas, a petition for the organization of a road improvement district, including the land described herein.

II

That said court, upon presentation of said petition, appointed Pride & Fairley, civil engineers, with directions to make a survey of the territory described therein, and report to said court.

III

That said Pride & Fairley did make a survey of said territory and reported to said court, whereupon said court appointed commissioners, with power and authority to levy the assessments and do any and all things incident to and connected with their duties as commissioners of said improvement district.

[fol. 3] IV

That said county court made an order in due and legal form, organizing and establishing said road improvement district, known and designated as Osceola & Little River Road Improvement District No. 1, the plaintiff herein.

V

That assessments were made upon said lands, approved by the commissioners, and said assessments were approved by the court, and issued and sold by said commissioners, the contracts were let, and the work is now progressing in said district.

VI

That the lands hereinafter described were duly and legally assessed and the amount of the assessment is set opposite each tract of land below, to-wit:

Name	Pt. of sec.	S., T., R.	A.	Tax	
E. L. Prince	R. Bank of R. S. W. ¼	2-12- 8	91.64	2.34	
Same	R. Bank of R. S. W. ¼	2-12- 8	11.53	.30	
Same	R. Bank of R. S. E. ¼	2-12- 8	23.16	.60	
P. J. Murray	Und. 2/3 E. of R. N. ½ S. E. ¼	2-12- 8	28.66	15.65	
J. P. Dail	S. E. ¼ S. E. ¼	2-12- 8	40	21.84	
O. M. Fairley	N. ½ N. E. ¼	3-12- 8	57	15.53	
R. A. West	E. ½ N. E. ¼	9-12- 8	80	2.08	
F. O. Holden	W. ½ S. E. ¼ S. E. ¼	10-12- 8	2.60	.05	
J. T. Coston	E. of R. All	11-12- 8	316	165.97	
Same	Bal. All E. of R.	14-12- 8	604.89	269.33	
J. J. Borah	W. ½ N. W. ¼	15-12- 8	80	2.08	
Same	E. ½ N. W. ¼	15-12- 8	80	2.04	
Andrew Jackson	N. & W. of R., S. ½ S. E. ¼	15-12- 8	30.32	1.78	
J. T. Coston	E. of R. N. E. ¼	15-12- 8	2.5	.98	
Byler & Johnson	S. W. ¼ N. E. ¼	17-12- 8	40	1.04	
Same	S. E. ¼ N. E. ¼	17-12- 8	40	1.04	
Ed. Jensen Est	E. ½ S. W. ¼	17-12- 8	80	2.08	
Same	S. E. ¼ N. W. ¼	17-12- 8	40	1.04	
B. F. Woodruff Est	W. ½ W. ½ N. W. ¼	27-12- 8	32.50	.80	
Same	Frl. W. ½ N. W. ¼ S. W. ¼	27-12- 8	6	.16	
Henry T. Hines	Lots 4, 6, 7	1-12- 9	120.67	55.30	
L. C. Lee	Lots 1, 2	1-12- 9	60.17	31.34	
B. F. Lee	Frl. Lot No. 7	2-12- 9	37.50	21.85	
[fol. 4] M. R. Sisco	Lots 1, 2. S. W. ¼ N. E. ¼	2-12- 9	62.37	34.05	
Taylor & Tellier	Lots 3, 4, S. ½ S. W. ¼	4-12- 9	163.26	85.79	
Taylor & Moore	S. W. ¼	4-12- 9	160	81.76	
Laughlin & Fairley	Frl. N. E. ¼	4-12- 9	156.67	84.24	
John C. Garrett	S. ½ S. W. ¼	5-12- 9	80	34.32	

A. H. Carpenter	Lot No. 2, S. W. ¼ N. E. ¼ N. ½ S. E. ¼	5-12- 9	162.52	80.94
Jas. W. Mullins	Lot No. 1, N. E. ¼ N. E. ¼	5-12- 9	82.29	43.37
W. C. Hardy	S. ½ S. E. ¼	5-12- 9	80	34.32
James Baker	Lot No. 4 & S. W. ¼ N. W. ¼	5-12- 9	82.97	43.75
J. E. Robbins	N. E. ¼	7-12- 9	160	59.28
J. T. Robbins	Lots 3, 4, 7, 8	7-12- 9	162.47	49.11
N. M. Benson	S. W. ¼	8-12- 9	160	46.80
Tellier & Gauss & Taylor	Lots 3, 4, 5, 6	9-12- 9	160.56	59.48
H. Laughlin	E. ½ S. W. ¼	9-12- 9	80	23.40
Gauss & Taylor	Lots 1, 8	9-12- 9	75.20	27.88
O. W. Gauss	Lots 2, 7, 9, 10	9-12- 9	163.79	54.58
Tellier, Gauss & Taylor	N. W. ¼ S. W. ¼ & S. W. ¼ S. W. ¼	9-12- 9	80	23.40
B. F. Lee	Lots 3, 4, 6, N. W. ¼	11-12- 9	108	59.33
F. M. Lee	Lots 1, 2, 7, 8	11-12- 9	126	66.50
F. M. Lee	Lot No. 1	12-12- 9	23.61	11.22
W. M. Stewart	Lot No. 1	16-12- 9	81.85	12.05
Henry Walker	Lot No. 1 S. E. ¼ N. E. ¼	18-12- 9	73.22	15.93
J. A. Mobley	Lots 1, 2	18-12- 9	156.56	24.45
Same	N. E. ¼ N. E. ¼	18-12- 9	40	10.92
Same	Lots 3, 4	18-12- 9	75.44	25.23
Lelia Sullivan	Pt. N. E. ¼ S. W. ¼	5-12-10	14	7.10
Harry Tandy	E. Pt. S ½ N. E. ¼	6-12-10	13	7.15
Newton Neely	S. E. ¼ S. W. ¼	18-12-10	40	18.72
Same	S. W. ¼ S. W. ¼	18-12-10	40	21.89
R. A. N. Walker	N. ½	21-13- 8	320	8.32
Moore & Lipscomb	N. W. ¼ S. W. ¼	23-13- 8	40	1.04
L. C. Woodruff	N. E. ¼ S. E. ¼	24-13- 8	40	1.04
L. C. Woodruff	S. E. ¼ N. W. ¼	24-13- 8	40	1.04
Same	S. ½ N. E. ¼	24-13- 8	80	2.08
Jas. Girdley Est	S of R., N. ½ N. E. ¼	25-13- 8	50	15.09

Name	Pt. of sec.	S., T., R.	A.	Tax
Same	S. W. ¼ N. E. ¼	25-13- 8	40	12.44
Dan Rider	Frl. S. E. ¼ S. E. ¼	26-13- 8	38	1.04
J. D. Hallmark	Pr. N. W. ¼ N. E. ¼	28-13- 8	1.5	.13
S. D. Lewis	Pt. N. W. ¼ N. E. ¼	28-13- 8	Lot	.11
O. W. Girdley	Pt. N. W. ¼ N. E. ¼	28-13- 8	1	.06
O. M. Fairley	S. E. ¼	34-13- 8	152	71.81
Same	S. E. ¼ N. E. ¼	34-13- 8	40	9.69
J. T. Coston	S. W. ¼	35-13- 8	160	84.24
Same	S. of R. E. ½	35-13- 8	274	134.51
Same	S. of R. N. W. ¼	35-13- 8	105	47.56
Frank Davis	N. of R. N. W. ¼	35-13- 8	32	.81
Sam Kilgore	Lots 1, 2	29-13- 9	28.24	11.01
Same	Lots 1, 2, 4, 5	32-13- 9	134.78	60.93
Jas. Shoemaker	Lots 7, 8, 11, 12	32-13- 9	158.57	83.84
[fol. 5] J. W. Rolins	Lot No. 3	32-13- 9	32.60	15.25
Jas. Baker	Lots 9, 10	32-13- 9	54.24	28.92
Arch Hennessee	Lots 1, 2, 3	33-13- 9	159.24	89.83
O. M. Fairley	All	20-13-10	640	312.00

VII

That said assessment became due and payable on the first Monday in January, 1922, and delinquent on the 10th day of April, 1922, and thereupon the commissioners of said road improvement district added to the amount of tax against said land the penalty of twenty-five per cent, as prescribed by law, all of which, with interest thereon, remains due and wholly unpaid.

Whereupon, the plaintiff prays judgment against said lands for the amount of said taxes, twenty-five per cent penalty, six per cent interest, reasonable attorney's fees, and all costs, as provided by law, and grant the petitioner general relief.

J. T. Coston, Attorney.

[fol. 6] IN THE CHANCERY COURT, MISSISSIPPI COUNTY

[Title omitted]

ANSWER

Come the above named defendants, and for joint and separate answer to the complaint filed against them and certain lands in the above styled cause, say:

They are the owners of the land mentioned in said suit and set opposite their respective names, as follows:

B. F. Lee ..... Frl. Lot 7, Sec. 2 & lots 3, 4, & 6 N. W. ¼ Sec. 11, Twp. 12 N. Range 9 E.

F. M. Lee ..... Lots 1, 2, 7 & 8, Sec. 11, and lot 1 Sec. 12, Twp. 12 N. Range 9 E.

L. C. Lee ..... Lots 1 & 2, Sec. 1, Twp. 12 N. Range 9 E.

M. R. Sisco ..... Lots 1, 2, S. W. ¼ N. E. ¼ Sec. 2, Twp. 12 N. Range 9 E.

Taylor & Tellier ..... Lots 3, 4, S. ½ S. W. ¼ Sec. 4, Twp. 12 N. Range 9 E.

O. W. Gauss ..... Lots 2, 7, 9, 10, Sec. 9, Twp. 12 N. Range
[fols. 7 & 8] 9 E.

Taylor & Moore ..... S. W. ¼ Sec. 4, Twp. 12 N. Range 9 E.

Taylor, Tellier & Gauss .. N. W. ¼ S. W. ¼ and S. W. ¼ S. W. ¼ Sec. 9, Twp. 12 N. Range 9 E.

Henry Hines ..... Lots 4, 6, & 7, Sec. 1, Twp. 12 N. Range 9 E.

H. Laughlin ..... E. ½ S. W. ¼ Sec. 9, and lot 1, Sec. 16, Twp. 12 N. Range 9 E.

Laughlin & Fairley .... Frl. N. E. ¼ Sec. 4, Twp. 12 N. Range 9 E.

John C. Garrett ..... S. ½ S. W. ¼ Sec. 5, Twp. 12 N. Range 9 E.

W. T. Ramsey .....Lot 2, S. W. ¼ N. E. ¼ N. ½ S. E. ¼ and lot 1, N. E. ¼ N. E. ½ S. ½ S. E. ¼ Sec. 5, S. W. ¼ Sec. 8, Twp. 12 N. Range 9 E. and lots 7, 8, 11 and 12, Sec. 32, Twp. 13 N. Range 9 E.

James Baker .....Lot 4 and S. W. ¼ N. W. ¼ Sec. 5, Twp. 12 N. Range 9 E. and lots 9 and 10, Sec. 32, Twp. 13 N. Range 9 E.

J. E. Robbins .....N. E. ¼ Sec. 7, Twp. 12 N. Range 9 E.

J. T. Robbins .....Lots 3, 4, 7 and 8, Sec. 7, Twp. 12 N. Range 9 E.

R. H. Jones .....S. E. ¼ N. E. ¼ N. E. ¼ N. E. ¼ and lots 1 and 2, Sec. 18, Twp. 12 N. Range 9 E.

J. A. Mobley .....Lots 3 and 4, Sec. 18, Twp. 12 N. Range 9 E.

Sam Kilgore .....Lots 1 and 2, Sec. 29, and lots 1, 2, 4 and 5, Sec. 32, Twp. 13 N. Range 9 E.

J. W. Rolins .....Lot 3, Sec. 32, Twp. 13 N. Range 9 E.

Arch Hennessee .....Lots 1, 2 and 3, Sec. 33, Twp. 13 N. Range 9 E.

II

Defendants admit that on — day of ——, 19— — —— et al. presented to the county court of Mississippi county, Arkansas, a petition for the organization of a road improvement district, includ-[fol. 9] ing the land described herein.

III

Admit that said Court upon presentation of said petition appointed Pride & Farley civil engineers, with direction to make a survey of the territory described therein, and report to said court.

IV

Admit that said Pride & Farley did make a survey of said territory, and reported to said court, whereupon said court appointed commissioners to levy the assessments, and do any and all things incident to and connected with their duties as commissioners of said Improvement District, but specifically deny that such commissioners had any power or authority whatsoever to levy the assessments which they did pretend to levy, or any assessment for any amount whatsoever upon the lands herein described.

V

Admit that said county court made an order organizing and establishing said Road Improvement District known and designated as Osceola-Little River Road Improvement District #1, the plaintiff herein, but deny that such order was due and legal insofar as it pre-

tended to include or affect any or all portions of the land hereinabove described.

VI

Admit that assessments were made upon the lands described in the petition hereinabove referred to, and approved by the commis- [fol. 10] sioners and by the court, and that bonds were issued and sold by said commissioners, and that contracts were let, but deny that the assessments purported to have been made by such commissioners upon any or all portions of the lands herein described were approved by the court.

VII

Admit that the lands described in plaintiff's complaint were pretended or purported to be assessed by such commissioners, and that the amount of the assessment set opposite each tract of land described in plaintiff's complaint is the amount pretended or purported to have been assessed by such commissioners against such lands. Defendants specifically deny, however, that the lands described herein were duly and legally assessed by such commissioners but aver that any assessment pretended or purported to have been made by such commissioners against any or all portions of the land herein described were wholly without legal authority and void.

VIII

Admit that said purported or pretended assessments, if legal, became due and payable on the first Monday in January, 1922, and delinquent on the 10th day of April, 1922, and admit that the commissioners of said Road Improvement District added to the amount of tax against said land the penalty of twenty-five per cent, all of which, with interest thereon, remains due and wholly unpaid, but defendants aver that such pretended or purported assessments so [fol.11] made by such commissioners were wholly without legal authority, and void, and that said assessments did not, therefore, become due and payable on the first Monday in January, 1922, and delinquent on the 10th day of April, 1922, and that the action of the commissioners of said Road Improvement District in adding to the amount of pretended or purported tax against said land the penalty of twenty-five per cent was wholly without legal authority and void.

For further and complete answer to the complaint filed herein, defendants state that no portion of the above described lands belonging to the above named defendants were or could have been legally included in the area embraced within the Osceola-Little River Road Improvement District #1, for the reason that at the time of the alleged organization of said Road Improvement District the title to all of said above described land was in the United States, and the said United States had not at the time of said alleged organization of said Road Improvement District, or at the time assessments against said land for improvement taxes were attempted, issued its final certificate or patent to any portion of said above described land.

That title to any and all of said above described lands being, at the time of the creation of the Osceola-Little River Road Improvement District #1, and at the time of the pretended or purported assessments against any and all portions of said above described lands, in [fol. 12] the United States, the creation of such District insofar as it pretended or purported to affect the lands hereinabove described, and the assessments made by such commissions insofar as they purported or pretended to affect any and all portions of the lands hereinabove described, were totally without power and authority, and void.

And now having fully answered, defendants ask that said complaint be dismissed as to them, and the lands described in this answer.

Prewitt Semmes, D. F. Taylor, Attorneys for Defendants.

[fol. 13] IN THE CHANCERY COURT, MISSISSIPPI COUNTY

[Title omitted]

AMENDMENT TO ANSWER

Come the defendants heretofore named in the original answer hereto, and amend their original answer, by substituting the following after the word such in the tenth line of page 4 of said original answer: "pretended or purported assessments so made by such commissioners were wholly without legal authority and void, and that said assessments did not, therefore, become due and payable on the first Monday in January, 1923, and delinquent on the 10th day of April, 1923, and that the action of the commissioners of said Road Improvement District in adding to the amount of pretended or purported tax against said land the penalty of twenty-five per cent was wholly without legal authority and void.

For further and complete answer to the complaint filed herein defendants state that no portion of the above described lands belonging to the above named defendants were or could have been legally included in the area embraced within the Osceola-Little River Road Improvement District #1, for the reason that at the time of the [fol. 14] alleged organization of said Road Improvement District, the title to all of said above described land was in the United States, and therefore the creation of such district insofar as it pretended or purported to affect the lands hereinabove described, and the assessments made by such commissioners insofar as they purported or pretended to affect any and all portion of the lands hereinbefore described, were totally without power and authority and void.

And now having fully answered, defendants ask that said complaint be dismissed as to them, and the lands described in the original complaint and in this answer.

Prewitt Semmes, D. F. Taylor, Attorneys for Defendants.

[fol. 15] IN THE CHANCERY COURT, MISSISSIPPI COUNTY

[Title omitted]

STIPULATION RE STATEMENT OF FACTS

It is stipulated and agreed by and between J. T. Coston, Attorney for the plaintiff, and Prewitt Semmes and D. F. Taylor, Attorneys for the defendants, that this cause, and the similar cause filed for enforcement of taxes for the year, 1923, shall be tried upon the following statement of facts, as though such facts were duly proved in open court:

1

That at the time of the organization and creation of Osceola-Little River Road Improvement District No. 1, all of the lands described in the original answers herein, were the property of the United States Government, and that such lands were included within the boundaries of said District, and assessments were made upon such lands at such times, which was prior to January 1, 1918. That such assessments so made, prior to January 3, 1921, were void because title to such property was in the United States.

2

That on January 3, 1921, the assessors of said District, acting [fol. 16] under order of the Board of Commissioners, re-assessed all the lands within said District, including the lands in controversy here, and such re-assessment was duly advertised, and approved by the Court. That the report of the assessors, the advertisement, and the approval of the court all related to a re-assessment of benefits upon all the lands within the district, including those in controversy.

3

That at the time of such re-assessment by the assessors, on January 3, 1921, and for many months prior thereto, the title to the lands in controversy was not in the United States, but was in the parties named in this proceeding, or their grantors, except as will hereafter be shown, and which such lands it is agreed will be eliminated from the proceeding.

J. T. Coston, Prewitt Semmes, D. F. Taylor.

[fol. 17] IN CHANCERY COURT, MISSISSIPPI COUNTY

[Title omitted]

DECREE AND ORDER ALLOWING APPEAL

On this day, September 19, 1923, this cause coming on to be heard, came the plaintiff by its attorney, J. T. Coston, but the defendants came not, except those named herein, and this cause was heard on the complaint, answer and amended answer and proof of publication; and stipulation, from which the court finds that the plaintiff is an improvement district, duly organized, and that this is an action to enforce a lien on the lands described below for a special assessment due the plaintiff thereon for the year 1922, the amount of said assessment being set opposite each tract of land as follows, to-wit:

Name	Pt. of sec.	S., T., R.	A.	Tax
Henry T. Hines	Lots 4, 6, 7	1-12-9	120.67	55.30
L. C. Lee	" 1, 2	1-12-9	60.17	31.34
B. F. Lee	Frl. Lot No. 7	2-12-9	37.50	21.85
M. R. Sisco	Lots 1, 2, S. W. ¼ N. E. ¼	2-12-9	62.37	34.05
Taylor & Tellier	" 3, 4, S.½ S. W. ¼	4-12-9	163.26	85.79
Taylor & Moore	S. W. ¼	4-12-9	160	81.76
John C. Garrett	S. ½ S. W. ¼	5-12-9	80	34.32
W. T. Ramsey	Lot No. 2 S. W. ¼ N. E. ¼ N. ½ S. E. ¼	5-12-9	162.50	80.94
Same	Lot No 1, N. E. ¼ N. E. ¼	5-12-9	82.29	43.37
Same	S. ½ S. E. ¼	5-12-9	80	34.32
James Baker	Lot No. 4 & S. W. ¼ N. W. ¼	5-12-9	82.97	43.75
J. E. Robbins	N. E. ¼	7-12-9	160	59.28
J. T. Robbins	Lots 3, 4, 7 & 8	7-12-9	162.47	49.11
W. T. Ramsey	S. W. ¼	8-12-9	160	46.40
H. Laughlin	E. ½ S. W. ¼	9-12-9	80	23.40
O. W. Gauss	Lots 2, 7, 9, 10	9-12-9	163.79	54.58
Tellier, Gauss & Taylor	N. W. ¼ S. W. ¼ & S. W. ¼ S. W. ¼	9-12-9	80	23.40
B. F. Lee	Lots 3, 4, 6, N. W. ¼	11-12-9	108	59.33
F. M. Lee	Lots 1, 2, 7 and 8	11-12-9	126	66.50
[fol. 18] F. M. Lee	Lot 1	12-12-9	23.61	11.22
R. H. Jones	N. E. ¼ N. E. ¼	18-12-9	40	10.92
Same	S. E. ¼ N. E. ¼	18-12-9	73.22	15.93
Same	Lots 1, 2	18-12-9	156.56	24.45
J. A. Mobley	Lots 3, 4	18-12-9	40	10.92
Sam Kilgore	Lots 1, 2	29-13-9	28.24	11.01
Same	Lots 1, 2, 4, 5	32-13-9	134.78	60.93
W. T. Ramsey	Lots 7, 8, 11, 12	32-13-9	158.57	83.48
J. W. Rlins	Lot No. 3	32-13-9	32.60	15.25
James Baker	Lots 9, 10	32-13-9	54.24	28.92
Arch Hennessee	Lots 1, 2, 3	33-13-9	159.24	89.83
H. Laughlin	Lot 1	16-12-9	81.85	12.05

The court finds that the notice of the pendency of this proceeding was given by four publications in the Osceola Times, the first publication being August 18th, and the last publication being September 8th, 1922, and that no other notice was given or published.

It is therefore considered, ordered, adjudged and decreed that the tax and an attorney's fee of 25% thereof, together with all other costs be, and they are hereby adjudged and decreed to be a first lien upon said lands.

It is further considered, ordered, adjudged and decreed that J. J. Cowan be and he is hereby appointed special commissioner to sell said lands to the highest bidder, for cash, at the front door of the court house in Osceola, Arkansas, after giving due notice of the time, terms and place of said sale by publication in the manner and for the length of time prescribed by law; and to report his action herein at the next term of court.

The proceeds of said sale, except the court costs, will be turned over by the commissioner to the attorney for the plaintiff.

[fol. 19] To which judgment and decree, the defendant, B. F. Lee, F. M. Lee, L. C. Lee, M. R. Sisco, Taylor & Tellier, O. W. Gauss, Taylor & Moore, Taylor, Tellier & Gauss, Henry Hines, H. Laughlin, Laughlin & Fairley, John C. Garrett, W. T. Ramsey, James Baker, J. E. Robbins, J. T. Robbins, R. H. Jones, J. A. Mobley, Sam Kilgore, J. W. Rolins and Arch Hennessee, excepted at the time and had their exceptions noted of record and prayed an appeal to the Supreme Court of Arkansas, which is granted.

[fol. 20] In Chancery Court, Mississippi County

Clerk's Certificate

I, John J. Cowan, Clerk of the Chancery Court, Osceola District, Mississippi County, Arkansas, do hereby certify that the above and foregoing pages contain a true, perfect and complete transcript of all the pleadings and exhibits thereto, record entries and proceedings in the case of Osceola & Little River Road Improvement District No. 1 of Mississippi County, Arkansas, vs. Certain Lands and E. L. Prince, et al., as the same appears on file and of record in my office.

This 15th day of October, 1923.

John J. Cowan, Clerk, by T. W. Potter, D. C. (Seal.)

[fol. 21] [File endorsement omitted.]

[fol. 22] IN SUPREME COURT OF ARKANSAS

B. F. LEE et al., Appellant-,

vs.

OSCEOLA & LITTLE RIVER ROAD IMPROVEMENT DISTRICT NO. 1, Appellee

Appeal from Mississippi Chancery Court, Osceola District

ORDER ADVANCING SUBMISSION OF CAUSE

On motion of the appellee, the appellant thereto consenting, and the Court being fully advised, it is ordered that the submission of this cause be advanced on the docket, and that the cause be set down for such submission on January 7th, prox.

[fol. 23] IN SUPREME COURT OF ARKANSAS

SUBMISSION OF CAUSE—January 7, 1924

This cause being regularly called, come the parties thereto by their solicitors, and said cause is submitted upon the transcript of the record and the briefs filed, and is by the court taken under advisement.

IN SUPREME COURT OF ARKANSAS

JUDGMENT—January 14, 1924

This cause came on to be heard upon the transcript of the record of the chancery court of Mississippi county, Osceola District, and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and decree of said chancery court in this cause.

It is therefore ordered and decreed by the Court that the decree of said chancery court in this cause rendered be, and the same is hereby, in all things, affirmed with costs.

It is further ordered and decreed that said appellee recover of said appellants all its costs in this Court in this cause expended, and have execution thereof.

[fol. 21] IN THE SUPREME COURT OF ARKANSAS

OPINION

Statement of Facts

This action was brought in the chancery court by a road improvement district against certain landowners to collect the assessment fo benefits levied against their lands.

The road district was created under Sec. 5399 et seq. of Crawford & Moses Digest providing for the establishment of road improvement districts. The lands involved in this suit are what are known as lake lands or sunk lands. They were included in the organization of the district and the benefits were assessed against them as lands of the riparian owners. Subsequently the lands were adjudged to belong to the United States. The claimants of the lands then homesteaded them under an act of Congress and the title passed from the United States to the homesteaders. Subsequently the Board of Assessors of the improvement district re-assessed all of the lands within the district including the lands in controversy in this case. The reassessments were regularly made according to the provisions of the statute made and provided in such cases, and there was a judgment of the county court confirming the assessments which were also made in conformity with the statute. No appeal was taken from the order of the county court confirming the assessments.

The chancellor found the issues in favor of the road improvement [fol. 25] district and it was decreed that the statutory lien of the assessments be foreclosed and the lands sold to pay the same.

The landowners have duly prosecuted an appeal to this court.

HART, J. (after stating the facts):

The landowners rely for a reversal of the decree upon the ground that the title to the lands in controversy was in the United States at the time the original assessment of benefits was made and that after the road was constructed there could be no re-assessment of benefits so as to include the lands in controversy, notwithstanding the fact that the title at the time of the re-assessment of benefits had passed from the United States to the landowners sued in this action.

We do not agree with the landowners in their contention. It is true, as contended by counsel for appellants, that the Legislature has no power to impose a tax of any character upon any property of the United States, and that this immunity includes special assessments for local improvements. Fagan v. City of Chicago, 84 Ill. 227; Ford v. City of Great Falls, (Mont.) 127 Pac. 1004; Ivinson v. Hance 1 Wyo. 270, and Whittaker v. Deadwood, (S. D. 139 Am. St. Rep. 1076. The reason is that the Federal government is supreme within the purview of the powers granted to it by the Constitution, and the property of the United States cannot be subject to [fol. 26] general taxation or to the levy of special assessments against it without the consent of Congress. This view was recognized in the case of Pierce v. Drainage District No. 17, 155 Ark. 89. In that

case the United States through Congress had expressly consented that the lands be taxed for drainage purposes.

So, too, in Ahern v. Board of Improvement District No. 3 of Texarkana, 69 Ark. 68, the principle was recognized when the court said that public property was not assessable and was properly excluded from the assessment of benefits in that case. So it will be seen that the property is exempt from special assessments because the title is in the United States and not because no benefits accrue to it. When, however, the title passes from the United States to purchasers or homesteaders the reason for the rule ceases and the rule therefore itself no longer obtains. The general rule is that when the United States has ceased to have any proprietary interest in property it becomes private property and as such is subject to general taxation. People v. Shearer, 30 Cal. 645, and Carroll v. Safford, 3 How. (U. S.) 441. With like reason, the lands would be subject to special assessments for local improvements after the title had passed from the United States to individuals.

But it is contended that such special assessments could not be made upon lands after the construction of the public improvement. This question has been expressly decided adversely to the contention of appellants by the Supreme Court of the United States in Seattle v. [fol. 27] Kelleher, 195 U. S. 351. In that case the court held that after the improvement of a street had been made, there could be a re-assessment of benefits, notwithstanding a previous invalid attempt to assess. The court said that the re-assessment might be a new assessment and that whatever the Legislature could authorize, if it were ordering an assessment for the first time, it equally could authorize, although the first assessment was invalid.

Again, in Wagner v. Baltimore, 239 U. S. 207, the court held that a State may, without violating the Fourteenth Amendment exercise authority to assess property on account of special benefits resulting from an improvement already made.

This court has held that the legislature may provide for a new assessment of benefits in a drainage district and for a re-assessment of benefits in a road district. Burr v. Beaver Dam Drainage District, 145 Ark. 51, and Earle Road Imp. Dist. No. 6, v. Johnson, 145 Ark. 438.

It results from the views that we have expressed that when the title to the lands in question passed from the United States to private owners, the lands became subject, not onoy to ordinary taxes, but to special assessments for public improvements. The lands are included within the boundaries of the improvement district and the question of the amount of benefits assessed against the lands is not raised. The only issue raised by the appeal is whether or not the lands are subject to the special assessment of benefits, and having decided that question adversely to the landowners, it follows that the decree must be affirmed. It is so ordered.

[fol. 28] IN SUPREME COURT OF ARKANSAS

CLERK'S CERTIFICATE

I, W. P. Sadler, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of B. F. Lee, et al., Appellants, vs. Osceola & Little River Road Improvement District No. 1, Appellee, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this March 6, 1924.

W. P. Sadler, Clerk Supreme Court of Arkansas, by ——, Deputy Clerk. (Seal of the Supreme Court of Arkansas.)

[fol. 29] IN THE SUPREME COURT OF ARKANSAS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed February 27, 1924

Now come the appellants, and respectfully submit that in the record, procedings, decision and final judgment of the Supreme Court of the State of Arkansas, in the above entitled matter, there is manifest error in this, to-wit:

I

The Supreme Court erred in holding that the special improvement tax assessed against the lands of appellants is a valid lien upon such lands, and is not in violation of appellants' rights under the Fourteenth Amendment to the Constitution of the United States.

II

The Court erred in holding that the lands in question, when the title passed from the United States to appellants, became subject to special assessments for public improvements, and that such assessment is not in violation of the Fourteenth Amendment to the Constitution of the United States, in that it deprives appellants of their [fol. 30] property without due process of law.

III

The Court erred in holding that the assessment of the lands of appellants could be lawfully made under the provisions of Sections 5429 and 5430 of Crawford & Moses Digest of the Statutes of the State of Arkansas, for that the provisions of Sections 5429 and 5430

of Crawford & Moses Digest of the Statutes of the State of Arkansas provide only for the re-assessment of lands, the owners of which have been given an opportunity to be heard in opposition to the creation of the Special Improvement District, and do not apply to a case where the owners of property have not been so given an opportunity to be heard in opposition to the creation of such District, and that by such holding appellants are deprived of their property without due process of law.

IV

The Court erred in holding that the provisions of Sections 5429 and 5430 of Crawford & Moses Digest of the Statutes of the State of Arkansas are valid insofar as they affect the lands of appellants, because said Sections 5429 and 5430 of Crawford & Moses Digest of the Statutes of the State of Arkansas are in violation of the rights guaranteed appellants under the Fourteenth Amendment to the Constitution of the United States, as such Sections of said Statutes have been construed by the Court in the instant case.

V

The Court erred in holding that in the application of Sections 5429 and 5430 of Crawford & Moses Digest of the Statutes of the State of Arkansas to the instant case, the appellants are not deprived of property without due process of law.

VI

The Court erred in holding that the defendant District might, [fol. 31] without violating the Fourteenth Amendment, exercise authority to assess the property of appellants on account of special benefits resulting from an improvement which had already been made, which authority to so assess the property of appellants was held by the Court to be granted to the defendant under Sections 5429 and 5430 of Crawford & Moses Digest of the Statutes of the State of Arkansas.

Wherefore your petitioners pray that the errors complained of be reviewed in the Supreme Court of the United States and the judgment aforesaid of said Supreme Court of Arkansas be reversed.

Prewitt Semmes, D. F. Taylor, Attorneys for B. F. Lee et al.

[File endorsement omitted.]

[fol. 32] IN THE SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR AND ORDER ALLOWING WRIT OF ERROR—Filed February 27, 1924

To the Honorable E. A. McCulloch, Chief Justice of the Supreme Court of the State of Arkansas:

Your petitioners, B. F. Lee, et al., respectfully set forth and show to your Honor:

That on the 14th day of January, 1924, the Supreme Court of the State of Arkansas, sitting at Little Rock, Arkansas, made and entered a final order of judgment in the above entitled cause in favor of the defendant and against your petitioners, in which final order and decree and the proceedings had in this cause, certain errors were committed to the prejudice of your petitioners, B. F. Lee, et al., all of which appear in detail from the assignment of errors filed in this cause with this petition; and

That the said Supreme Court of the State of Arkansas is the highest Court of said State of Arkansas in which a decision in this suit and matter could be had; and

That this suit or cause is one in which the defendant sought to recover from your petitioners a special improvement tax assessed [fol. 33] against the lands of petitioners, your petitioners insisting that they are not liable for said special improvement tax, and their lands are not liable to be sold for said special improvement tax, for the reason that at the time of the creation of the Special Improvement District the lands in question were the property of the United States Government, and that the property passed to appellants free from any liability for special improvement which had been made upon said lands at the time when the porperty was owned by the Government, and when appellants had no rights in and to said lands, and therefore, that the subsequent attempt to assess and collect said tax is in violation of the rights guaranteed your petitioners under the Fourteenth Amendment to the Constitution of the United States, and an unlawful interference with property of the United States Government.

A final judgment was rendered in this cause as above stated, giving judgment against your petitioners, and adjudging that your petitioners are liable for said Special Improvement tax, and that their lands are liable to foreclosure for the payment of such tax and the costs of this cause.

This judgment, your petitioners show, was erroneous as shown by and upon the grounds stated in the assignment of errors filed herewith.

Wherefore your petitioners, B. F. Lee, et al., pray that a writ of error from the Supreme Court of the United States may issue in their behalf to the Supreme Court of the State of Arkansas, for the correction of errors so complained of, and that a transcript of the record,

proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

This 26 day of February, 1924.

Prewitt Semmes, D. F. Taylor, Attorneys for B. F. Lee et al.

[File endorsement omitted.]

Writ of error granted on within petition on execution of cost bond in sum of $1,000.00. This February 26, 1924.

E. A. McCulloch, Chief Justice Supreme Court of Arkansas.

[fols. 34 & 35] IN THE SUPREME COURT OF ARKANSAS

[Title omitted]

BOND ON WRIT OF ERROR FOR $1,000.00—Approved and filed February 27, 1924; omitted in printing

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[fol. 36] IN SUPREME COURT OF ARKANSAS

WRIT OF ERROR—Filed February 27, 1924

UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Supreme Court, before you, or some of you, being the highest court of law or equity of the said state in which decision could be had in the said suit between B. F. Lee, et al., Appellants, and Osceola & Little River Road Improvement District #1 of Mississippi County, Arkansas, Appellee, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said state on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of their validity, or wherein was drawn in question the constitution of a clause of the Constitution, or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege or immunity especially set up or claimed under such clause of the said Constitution, statute, treaty or commission; a manifest error had happened to the great damage of the said appellants, as is said and appears by its complaint. We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the

parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

[fol. 37] Witness the Honorable William Howard Taft, Chief Justice of the United States, this 26th day of February, in the year of our Lord, one thousand nine hundred and twenty-four.

Sid B. Redding, Clerk of the United States District Court, Eastern District of Arkansas, by W. P. Feild, D. C. (Seal of the United States District Court, Eastern Division.)

The above writ is allowed by E. A. McCulloch, Chief Justice of the Supreme Court of the State of Arkansas.

[File endorsement omitted.]

[fol. 38] IN SUPREME COURT, STATE OF ARKANSAS

CLERK'S CERTIFICATE OF LODGMENT

I, W. P. Sadler, clerk of the said court, do hereby certify that there was lodged with me as such clerk on February —, 1924, in the matter of B. F. Lee et al. versus The Osceola & Little River Road Improvement District No. 1,

1. The original bond of which a copy is herein set forth.

2. Copies of the writ of error, as herein set forth, one for each defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this March 6, 1924.

W. P. Sadler, Clerk Supreme Court of Arkansas, by ——, Deputy Clerk. (Seal of the Supreme Court of Arkansas.)

[fol. 39] IN SUPREME COURT OF ARKANSAS

CITATION—In usual form, showing service on J. T. Coston; filed March 3, 1924; omitted in printing

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[fol. 40] IN SUPREME COURT OF ARKANSAS

RETURN TO WRIT OF ERROR

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the City of Little Rock, this March 6, 1924.

W. P. Sadler, Clerk Supreme Court of Arkansas, by ——, Deputy Clerk. (Seal of the Supreme Court of Arkansas.)

IN SUPREME COURT OF ARKANSAS

COSTS OF SUIT—Omitted in printing

Endorsed on cover: File No. 30,215. Arkansas Supreme Court. Term No. 905. B. F. Lee et al., plaintiffs in error, vs. Osceola & Little River Road Improvement District No. 1 of Mississippi County, Arkansas. Filed March 22nd, 1924. File No. 30,215.